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CHARLES ELMORE CROPLEY
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 413

HAZEL PARK NON PARTISAN TAXPAYERS ASSOCIATION, ET AL.,

Appellants,

vs.

TOWNSHIP OF ROYAL OAK, ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF MICHIGAN

STATEMENT OF APPELLEE, TOWNSHIP OF ROYAL OAK, OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM.

GLENN C. GILLESPIE,
FRANKLIN E. MORRIS,
Counsel for Appellee,
Township of Royal Oak.

SUPREME COURT OF THE UNITED STATES

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STATEMENT BY APPELLEE, TOWNSHIP OF ROYAL OAK, SHOWING LACK OF JURISDICTION OF APPEAL.

Now comes appellee, Township of Royal Oak, and shows the following matters of record, which disclose that these appellants, have no right of review of the decision of the Supreme Court of Michigan in the above entitled cause, under the rules and practice of this Court:

1. *The 5th Amendment to the Constitution does not apply.*

The 5th Amendment to the Constitution of the United States, relied upon in part by appellants, was designed

exclusively as a restriction upon the exercise of Federal power, and does not apply to laws enacted by, or, proceedings had under the authority of, a State Government.

> Authorities too numerous to cite, collected under note in 1 F. C. A. commencing at page 250, and supplement No. 1 at page 179.

2. *Plaintiffs and appellants, Hazel Park Non Partisan Taxpayers Assn. and John G. Campbell, did not appear as appellants in the Supreme Court of Michigan.*

Plaintiffs and appellants, Hazel Park Non Partisan Taxpayers Association and John G. Campbell, as appears from the records and files in this cause, are not proper appellants in this Court for the reason that they took no appeal from a decision adverse to their present claims by the Circuit Court for the county of Oakland, in chancery, to the Supreme Court of the State of Michigan, and consequently were not parties to the decision in that court, and now have no right as appellants to appeal from the subsequent decision of that court adjudicating the claims of other appellants.

The Supreme Court of Michigan in its opinion which forms the basis of this appeal, in stating the position of the parties in that court, said in part:

> "From this decree (of the circuit court for Oakland County) the city of Pleasant Ridge appeals, and the cities of Pleasant Ridge and Huntington Woods have joined together in a cross-appeal, and the city of Royal Oak takes a separate cross-appeal. The other parties, not having sought review, must be considered as content with the decree."

3. Remaining appellants have no rights under 14th Amendment.

The remaining appellants, cities of Pleasant Ridge and Huntington Woods, being mere instrumentalities of the State of Michigan, may not invoke the protection of the 14th Amendment as against an act of the State legislature directing the levying of the tax.

The provisions of Section 1 of the 14th Amendment to the Constitution of the United States, under the well settled law, may be invoked only by citizens of the United States, and does not limit the power of a State over its political subdivisions.

Trenton v. *New Jersey*, 262 U. S. 182, 67 L. Ed. 937, 43 S. C. R. 534, 29 A. L. R. 1471;

Newark v. *New Jersey*, 262 U. S. 192, 67 L. Ed. 943, 43 S. C. R. 539;

Risty v. *Chicago R. I. & P. Ry.*, 270 U. S. 378, 70 L. Ed. 641, 46 S. C. R. 236.

"The power of a state to control its own governmental agencies and political subdivisions is unrestrained by the requirements of due process of the law, and since the requirement is a limitation on the state itself, it is not available to the state, or its agencies or political subdivisions."

16 C. J. S. p. 1158.

"So far as the state and its instrumentalities are concerned, there is no scope for invoking the due process guaranty as against the action of the state itself."

12 Am. Jur. p. 288.

See also *Graves* v. *Bliss*, 235 Mich. 364, 209 N. W. 142, involving a similar statute under the drain law, where

certiorari was denied by this Court in *Bliss* v. *Graves*, 273 U. S. 724, 71 L. Ed. 859.

Respectfully submitted,

GLENN C. GILLESPIE,
1101 Pontiac State Bank Bldg.,
Pontiac, Michigan;
FRANKLIN E. MORRIS,
22,748 Woodward Avenue,
Ferndale, Michigan,
Attorneys for Defendant and
Appellee, Township of Royal Oak.

Dated at Pontiac, Michigan, this 26th day of September, 1947.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 413

HAZEL PARK NON PARTISAN TAXPAYERS ASSOCIATION, ET AL.,

Appellants,

vs.

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APPEAL FROM THE SUPREME COURT OF THE STATE OF MICHIGAN

MOTION TO DISMISS OR AFFIRM

Now Comes the Township of Royal Oak, defendant, cross-plaintiff and appellee, by Glenn C. Gillespie and Franklin E. Morris, its attorneys, and moves this Honorable Court:

1. To dismiss the writ of error heretofore issued in the above entitled cause, and, all proceedings thereunder, for the reason that no Federal question is presented by the record.

2. In case the foregoing motion is denied, to affirm the decree of the Supreme Court of Michigan for the

reason that it is final as to appellant, and the questions involved are so frivolous as to need no further argument.

This motion is based on the records and files in said cause and the statement and authorities heretofore filed in this cause by appellee showing lack of jurisdiction of this Court of said appeal.

Dated at Pontiac, Michigan, this 30th day of September, 1947.

GLENN C. GILLESPIE,
1101 Pontiac State Bank Bldg.,
Pontiac, Michigan;
FRANKLIN E. MORRIS,
22,748 Woodward Avenue,
Ferndale, Michigan,
Attorneys for Defendant,
Cross-Plaintiff and Appellee,
Township of Royal Oak.

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